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ANN BAVENDER*
ANNE GOODWIN CRUMP*
VINCENT J. CURTIS, JR.
PAUL J. FELDMAN*
ERIC FISHMAN*
RICHARD HILDRETH
EDWARD W. HUMMERS, JR.
FRANK R. JAZZO
CHARLES H. KENNEDY*
KATHRYN A. KLEIMAN
BARRY LAMBERGMAN
PATRICIA A. MAHONEY
M. VERONICA PASTOR*
GEORGE PETRUTSAS
LEONARD R. RAISH
JAMES P. RILEY
MARVIN ROSENBERG
KATHLEEN VICTORY*
HOWARD M. WEISS

*NOT ADMITTED IN VIRGINIA

FLETCHER, HEALD & HILDRETH, P.L.C.

ATTORNEYS AT LAW

11th FLOOR, 1300 NORTH 17th STREET

ROSSLYN, VIRGINIA 22209

(703) 812-0400

TELECOPIER

(703) 812-0486

INTERNET

HILDRETH@ATTMAIL.COM

ROBERT L. HEALD
(1956-1983)
PAUL D.P. SPEARMAN
(1936-1962)
FRANK ROBERSON
(1936-1961)

RETIRED
RUSSELL ROWELL
EDWARD F. KENEHAN
FRANK U. FLETCHER

OF COUNSEL
EDWARD A. CAINE*

WRITER'S NUMBER
(703) 812-

0429

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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VIA HAND-DELIVERY
Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Attn: Ms. Regina M. Keeney
Chief, Wireless Telecommunications Bureau

Re: Request for Clarification
of Sections 1.2110, 20.6, 24.204(d)(2)(ii)
and 24.714 of the Commission's Rules

Dear Mr. Caton:

This letter is submitted on behalf of Roseville Telephone Company ("Roseville") and it requests clarification of Sections 1.2110, 20.6, 24.204(d)(2)(ii) and 24.714 of the Commission's Rules. As discussed more fully below, Roseville seeks clarification regarding the application of the Commission's commercial mobile radio service ("CMRS") spectrum aggregation rules, the personal communications service ("PCS") geographic partitioning rules, and the PCS/cellular telephone cross-ownership rules, to a "rural telephone company" as that company grows over, in the normal course of business, 100,000 access lines, after auction and/or initial licensing.

In the Commission's *Regulatory Treatment of Mobile Services Third Report and Order*, FCC 94-212, released September 23, 1994 (the *"CMRS 3rd R&O"*), the Commission established a CMRS aggregate spectrum cap under which no entity could hold an attributable interest in more than 45 MHz of spectrum in the broadband PCS, cellular telephone and specialized mobile radio services in any particular geographic area. In establishing attribution rules for the purposes of this spectrum cap, the Commission adopted rules similar to those used in connection with its PCS/cellular cross-

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ownership rules: generally a 20 percent interest in a licensee in one service would make all of the spectrum of that licensee attributable for the CMRS spectrum cap.[1] However, designated entities, including rural telephone companies, can have up to a 40 percent non-controlling interest in a cellular or SMR licensee before that interest is attributable for the purposes of the CMRS spectrum cap. *See, CMRS 3rd R&O* at paras. 276-278. This CMRS spectrum cap attribution standard is codified at Section 20.6(d)(2) of the Commission's rules.

In referring to the designated entities eligible for the 40 percent attribution standard, Section 20.6(d)(2) refers to the definitions of those entities in "§ 1.2110 ... or other provisions of the Commission's Rules." Sections 1.2110(b)(3) and 24.720(e) define a rural telephone company to be "... a local exchange carrier having 100,000 or fewer access lines, including all affiliates."

Similarly, Section 24.204 of the Commission's Rules establishes a cellular/PCS cross-ownership limitation under which no party may hold more than 10 MHz of PCS spectrum for a particular area if that area overlaps the CGSA of a cellular telephone licensee owned or controlled by the same party. The attribution standards for this cross-ownership limitation, set forth in Section 24.204(d)(2)(ii), are generally that ownership of 20 percent of the cellular licensee creates an attributable interest. However, the rule creates an exception under which up to 40 percent equity interest in an overlapping cellular licensee may be held by a rural telephone company, as that term is defined in Section 1.2110 of the Commission's Rules.

Thus, for example, under Sections 1.2110(b)(3), 24.204(d)(2)(ii) and 20.6(d)(2), a local exchange carrier A ("LEC A") with fewer that 100,000 access lines could, as a "rural telephone company," have a 25 percent interest in a cellular licensee X, and this holding would not create an attributable interest for LEC A if it were to bid for and obtain PCS spectrum in a geographic area that overlapped cellular licensee X's CGSA. As a result, LEC A could bid for and obtain up to 40 MHz of PCS spectrum in that geographic area, while retaining its 25 percent holding in cellular licensee X's 25 MHz of cellular spectrum in an overlapping area.

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[1] *See,* Section 24.204(d)(2)(ii) of the Rules.

The need for clarification of the CMRS spectrum cap attribution rules arises as follows: Assume that LEC A is in compliance with the CMRS spectrum cap, due to its status as a rural telephone company, at both the time of bidding for PCS spectrum, and after winning the spectrum, at the time of obtaining its PCS license. What happens when thereafter, due to normal growth in population of its wireline service area, and/or increased wireline subscribership in its wireline service area, LEC A goes over 100,000 access lines? Is LEC A still a "rural telephone company" for the purposes of the CMRS spectrum aggregation cap and the PCS/cellular cross-ownership limitation, with the result that its 25 percent holdings in cellular licensee X are not attributable for the purposes of those two rules? It is respectfully submitted, and the Commission is requested to so clarify the rules, that in the above situation, LEC A should continue to be considered a rural telephone company for the purposes of the CMRS spectrum cap and the PCS/cellular cross-ownership limitation. It should be noted that clarification is sought regarding the case where growth over the 100,000 access line limit occurs due to normal growth in population of the LEC wireline service area, and/or increased wireline subscribership in its wireline service area. This scenario is different than one where growth occurs due to merger with or purchase by another LEC.[2]

Similar clarification is called for in connection with the Commission's geographic partitioning rules. Under Section 24.714(a) of the Commission's Rules, rural telephone company applicants (as defined in Section 24.720(e)) may be granted a broadband PCS license that is geographically partitioned from a separately licensed major trading area ("MTA") or basic trading area ("BTA") license. This makes it clear that initially an entity must come under the definition of rural telco in order to receive a partitioned license. However, as was described above, what happens when thereafter, due to normal growth in population of its wireline service area, and/or increased wireline subscribership in its wireline service area, the rural telco goes over 100,000 access lines? Surely the Commission could not want

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[2] Roseville recognizes that it may not be consistent with the policies underlying the cross-ownership and spectrum cap rules to allow rural telephone companies to retain this status after merging with substantially larger LECs. However, Roseville urges the Commission to allow a rural telephone company to retain that status when it merges with or purchases a LEC smaller than itself. That smaller LEC would by definition itself be a rural telephone company.

the rural telco to be required to sell its partitioned license.[3] Again, it is respectfully submitted, and the Commission is requested to so clarify the rules, that a rural telco may retain its partitioned license even after it goes over 100,000 access lines due to normal growth in population of its wireline service area, and/or increased wireline subscribership in its wireline service area.

An analysis of the Commission's Rules supports the clarifications sought above. First, neither the above-cited rules, nor any other rule in Parts 1, 20 or 24, explicitly state that rural telephone companies are to lose that status or any benefits associated with that status if the number of their access lines grows after the relevant license is granted. Where the Commission wanted to place restrictions on the growth of PCS licensees, it could have done so specifically. However, while the Commission must have known that rural telcos would grow, and that such growth would be reflected in the number of access lines, no specific mention is made of losing status or benefits as a result of such growth.

Second, even where the Commission placed restrictions on the growth of small business and "entrepreneur" licensees who obtained licenses in the C and F Blocks, the Commission nevertheless recognized that the revenues and assets of successful small and entrepreneurial licensees will grow, and that such growth should be encouraged. Accordingly, Section 24.709(a) provides that while eligibility (based in part on revenues and assets) for C and F Block licenses must be maintained for five years, increases from "revenue from operations, business development or expanded service shall not be considered [towards their continued eligibility]." Similarly, while Section 24.711(e)(2) requires entrepreneurs block licensees who used installment payments to repay accrued principal and

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[3] The Commission stated in note 102 of its *Competitive Bidding Fifth Report and Order* (FCC 94-178, released July 15, 1994) that rural telcos that obtain partitioned licenses in the so-called "entrepreneurs' blocks" will be subject to the five-year holding and limited transfer period applicable to other licensees in the C and F blocks. *See* Sections 24.839(d)(1) and (2) of the Commission's Rules. However, this appears to apply to rural telcos as "entrepreneurs," not as rural telcos. Section 24.839(d)(3) addresses geographically partitioned licenses for rural telcos, but appears to only address the initial partitioning of a license, not the issue of a rural telco growing over 100,000 access lines.

interest if they lose their eligibility as entrepreneurs, the Rule provides an exception for licensees who have gone over the asset/revenue limits due to "revenues from operations, business development or expanded service." In addressing the clarification of rural telco status sought herein, the Commission must recognize that rural telco status for the purposes of these rules is measured in access lines, not assets or revenues. Accordingly, the Commission should allow rural telcos to retain their status when they go above 100,000 lines resulting from growth in population of its wireline service area, and/or increased wireline subscribership in its wireline service area, an approach analogous to allowing entrepreneurs to go over the revenues/assets limits as a result of "revenues from operations, business development or expanded service."

Lastly, policy and equity considerations also support the clarifications sought herein. First, as the Commission noted in paragraphs 2 through 7 of its *Competitive Bidding Second Report and Order* (FCC 94-61, released April 20, 1994), in crafting competitive bidding rules that promote the objectives set forth in Section 309(j)(3) of the Communications Act, such rules must promote economic growth, provision of advanced telecommunications services to rural subscribers, and enhanced participation in the provision of such services by rural telcos. As the Commission has stated, both the Congress and the Commission intend to help small telephone companies to become viable PCS service providers, recognizing that small telephone companies with their existing infrastructure are well suited to introduce PCS services into their service areas and in adjacent areas. *See, PCS Memorandum Opinion and Order*, Gen. Dkt. No. 93-314, FCC 94-144, released June 13, 1994, para. 127; and *Competitive Bidding Fifth Report and Order, supra.*, at Paras. 148-153; 193-203. Furthermore, in clarifying the provisions of Section 24.709(a) which provide that eligibility (based in part on revenues and assets) for C and F Block licenses must be maintained for five years, the Commission stated that it

> has a strong interest in seeing entrepreneurs grow and succeed in the PCS marketplace. Thus, normal projected growth of gross revenues and assets, or growth such as would occur as a result of a control group member's attributable investments appreciating, or as a result of a licensee acquiring additional licenses [citation omitted] would not generally jeopardize continued eligibility as an entrepreneurs' block licensee.

See, Competitive Bidding Fifth Memorandum Opinion and Order, PP.

Dkt. No. 93-253, FCC 94-285, released November 23, 1994, at para. 27 ("*Competitive Bidding 5th MO&O*").[4]

In applying those principles to the present issues, the Commission should recognize that growing over 100,000 access lines is a measure of the economic growth of the area served by the LEC. It would be counter-productive if the rules for licensing a technology designed to promote economic growth in fact punish the results of that growth. Pushing the rural telco over the CMRS spectrum aggregation cap, the PCS/cellular cross-ownership limit, or removing its right to a partitioned license would directly contradict the above-stated Congressional and Commission goals of maximizing provision of PCS to rural subscribers. Furthermore, the clarifications sought herein would recognize and promote the "normal projected growth" of a rural telco PCS provider, and thus would be consistent with the Commission's action in the clarification set forth in paragraph 27 of the *Competitive Bidding 5th MO&O*, as described above.

Lastly, clarification of the CMRS spectrum aggregation attribution rule as sought herein would not be inconsistent with the pro-competitive policy that formed the basis of the attribution rule. A LEC's growth over 100,000 wireline access lines will have no bearing on its ability to use diverse wireless holdings in any anti-competitive manner.

In sum, Roseville Telephone believes that interpretation of Sections 1.2110, 20.6, 24.204(d)(2)(ii) and 24.714 of the Commission's Rules as urged above would be consistent with Commission and Congressional policy, and with the position the Commission has taken in the above-described analogous situations. A contrary interpretation of the rules would be unreasonable and would discourage, if not severely restrict, participation of rural independent telephone companies in the broadband PCS licensing process.

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[4] In paragraphs 108-109 of the *Competitive Bidding 5th MO&O*, the Commission denied two petitions for reconsideration seeking to modify the definition of rural telephone company. However, those petitions sought a revision to the definition used to establish the initial eligibility to qualify as a rural telco, while this request seeks a clarification regarding the status of a company that initially qualifies as a rural telco, but subsequently grows over the 100,000 access line limit as a result of normal business growth.

This issue is not merely academic. Roseville is currently a rural telephone company, in that it is a LEC with fewer than 100,000 access lines. It has a 23 percent non-controlling limited partnership interest in a cellular license, Sacramento Valley Limited Partnership, whose CGSA covers areas for which Roseville (or any entities in which Roseville has or will have an attributable interest) may apply for broadband PCS licenses. While Roseville Telephone expects to continue to have fewer than 100,000 access lines when it (or an entity in which it would have an attributable interest) submits broadband PCS applications, it believes that in the foreseeable future and in the normal course of business, the number of its access lines may exceed 100,000, due to growth in population of its wireline service area, and/or due to increased subscribership therein. Roseville, therefore, needs to know, if its access lines do grow to over 100,000 after the PCS applications are filed or after the PCS broadband licenses are issued, whether it will continue to be considered a "rural" telephone company for the purposes of the Section 20.6 CMRS spectrum aggregation limit. Roseville is also considering a number of alternatives that could result in its holding one or more partitioned licenses. Resolution of these issues is necessary for Roseville, and other similarly situated LECs,[5] to be able to complete strategic planning for the upcoming PCS auctions.

Since the application and bidding process for broadband PCS basic trading area licenses is to begin soon, an early response to this letter will be greatly appreciated.

Very truly yours,

George Petrutsas
Paul J. Feldman
Counsel for Roseville Telephone Company

cc: Rosalind K. Allen, Esq.; Jonathan V. Cohen, Esq.; Gregory Rosston, Esq.

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[5] Many LECs that currently qualify as rural telephone companies have minority interests in cellular carriers as a result of settlement of the original cellular comparative cases, as requested by the Commission to promote speedy initiation of cellular service.